IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 28, 2009

RICHARD LYNN NORTON v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 5330 Lynn W. Brown, Judge

No. E2009-00119-CCA-R3-HC Filed February 5, 2010

The Petitioner, Richard Lynn Norton, appeals pro se the Criminal Court for Johnson County's summary dismissal of his petition for writ of habeas corpus. On appeal, the Petitioner contends that the trial court did not have jurisdiction to render judgment for his convictions, that the trial court erred in dismissing the petition for writ of habeas corpus without an evidentiary hearing and without appointing counsel, that the trial court erred by failing to rule on his motion to amend, and that his sentences have expired. Because the Petitioner's notice of appeal was not timely filed, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Richard Lynn Norton, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; and Anthony Wade Clark, District Attorney General.

OPINION

The Petitioner was convicted by a jury of three counts of sale or delivery of more than one-half gram of cocaine, a Class B felony. He was sentenced as a Range I, standard offender to twelve years for each conviction, to run consecutively, for an effective thirty-six-year sentence. On appeal, this court affirmed the Petitioner's convictions but modified the sentences to require him to serve only two of them consecutively, for an effective twenty-four-year sentence. See State v. Richard Lynn Norton, No. E1999-00878-CCA-R3-CD, Greene County, slip op. at 1(Tenn. Crim. App. 2000). This court affirmed the trial court's dismissal of the Petitioner's first pro se petition for habeas corpus relief, in which he

contended that his convictions were void because the presentments did not charge the "overt act" of knowingly possessing a controlled substance and because evidence in his case was fabricated. See Richard Lynn Norton v. Bell, No. M2001-02516-CCA-R3-CO, Davidson County, slip op. at 1 (Tenn. Crim. App. June 13, 2002) (mem.).

The Petitioner filed another pro se petition for writ of habeas corpus on October 15, 2008, in which he contended that the multiple convictions arising from the single trial violated double jeopardy and that the presentments were void because they were altered by the trial court. The trial court dismissed the petition in a written order filed November 25, 2008, concluding that nothing in the petition would support a finding that the Petitioner's convictions were void or that his sentences had expired. The Petitioner filed a notice of appeal on January 12, 2009, forty-eight days later.

On appeal, the Petitioner contends that the trial court erred when it dismissed his petition for writ of habeas corpus. The State contends that the notice of appeal was not timely filed and that, even if this court were to consider the merits of the Petitioner's appeal, they are not cognizable in a habeas corpus proceeding. We agree with the State.

Rule 4 of the Tennessee Rules of Appellate Procedure requires a party to file a notice of appeal within thirty days "after the date of entry of the judgment appealed from." T.R.A.P. 4(a). In the interest of justice, we may waive the timeliness requirement and proceed to analyze the issues raised by the parties. Id. We conclude that the interest of justice does not warrant a waiver in this case. The Petitioner's appeal was untimely, and none of the claims merit further review because they would not result in relief even if they were true. See, e.g., Pegues v. Mathis, No. M2007-01615-CCA-R3-HC, Davidson County (Tenn. Crim. App. May 14, 2008), app. denied (Tenn. Aug. 25, 2008) (dismissing pro se petitioner's appeal of trial court's denial of writ of habeas corpus because appeal was untimely and underlying claims did not entitle Petitioner to relief).

In consideration of the foregoing and the record as a whole, we dismiss the Petitioner's appeal.

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JOSEPH M. TIPTON, PRESIDING JUDGE